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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,699

09/29/2006

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2003M091

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23455 7590 08/19/2008  
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EXAMINER

HEINCER, LIAM J

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

08/19/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,699	<b>Applicant(s)</b> DE MUNCK ET AL.	
	<b>Examiner</b> Liam J. Heincer	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 6, 2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Godwin et al. (US Pat. 4,543,420) in view of Schlosberg et al. (US Pat. 4,543,420). Considering Claim 10 and 15, 17, 18, 20, 22-24: Godwin et al. teaches a process for preparing a plasticizer ester (1:7-10) comprising esterifying a polybasic aromatic

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carboxylic acid or anhydride with an acid having nine or ten carbon atoms (3:20-30); treating the ester with a base; stripping the liquid product; adding powdered/activated carbon/an adsorbent and clay/a filter aid to the liquid; filtering the product (Example 1); and measuring the light ends of the composition (5:23-25, Table II).

Godwin et al. does not teach filtering the crude ester to remove a liquid product and then stripping the liquid product before the purification steps. However, Schlosberg et al. does teach the filtration of solids from the ester mixture and then removal of excess alcohol by steam stripping before the final filtration (purifying) steps (Col. 6, lines 1-5). Godwin et al. and Schlosberg et al. are combinable because they are from the same field of endeavor, namely that of processes for making plasticizer esters. At the time of the invention, a person of ordinary skill in the art would have found it obvious to include the steps of filtration of solids from the ester mixture and then removal of excess alcohol by steam stripping, as taught by Schlosberg et al., in the overall process, as taught by Godwin et al., and would have been motivated to do so because an extra filtration step can enhance the purity of the plasticizer ester as well as enhancing its properties.

Considering claims 11 and 12: Godwin et al. teaches the base as being caustic/sodium hydroxide (Example 1).

Considering Claim 13: Godwin et al. teaches separating the aqueous and organic phases/removing water (Example 1).

Considering Claim 14: Godwin et al. does not teach the initial removal of water as being done by stripping or flashing. However, Schlosberg et al. teaches using a flash step to remove water prior to filtering and stripping (5:66-67). It would have been obvious to a person having ordinary skill in the art at the time of invention to have used the flash technique of Schlosberg et al. in the process of Godwin et al., and the motivation to do so would have been, it is a known technique for separating the water and organic phases during the production of plasticizer esters.

Considering Claim 16: Godwin et al. does not teach using phthalic anhydride. However, Schlosberg et al. teaches a plasticizer made from an esterification reaction between phthalic anhydride and an alcohol (Example 1). It would have been obvious to

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a person having ordinary skill in the art at the time of invention to have used the phthalic anhydride of Schlosberg et al. in the process of Godwin et al., and the motivation to do so would have been, as Schlosberg et al. suggests, phthalate esters have high oxidative stability (Example 1).

Considering Claim 19: Godwin et al. teaches the filter aid and adsorbent as being used in a combined amount of 0.3 wt percent (Example 1).

Considering Claim 21: Godwin et al. teaches the mixture of filter aid and adsorbent as being 67 weight percent filter aid and 33 weight percent adsorbent (Example 1).

Considering Claim 25: Clay will act as both a filter aid and an absorbent material, as evidenced by Schlosberg et al. (6:9-11).

Considering Claims 26-27: Godwin et al. teaches the adsorbent as being added at 95 °C (Example 1).

Considering Claims 28 and 29: Godwin et al. teaches the adsorbent as being added at 95 °C (Example 1).

Godwin et al. does not teach using phthalic anhydride. However, Schlosberg et al. teaches a plasticizer made from an esterification reaction between phthalic anhydride and an alcohol (Example 1). It would have been obvious to a person having ordinary skill in the art at the time of invention to have used the phthalic anhydride of Schlosberg et al. in the process of Godwin et al., and the motivation to do so would have been, as Schlosberg et al. suggests, phthalate esters have high oxidative stability (Example 1).

The Office recognizes that all of the claimed effects and physical properties are not positively stated by the reference. However, the reference teaches all of the claimed ingredients. Therefore, the claimed effects and physical properties would implicitly be achieved by combining the disclosed ingredients. If it is applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties and effects by combining only these ingredients.

***Response to Arguments***

Applicant's arguments with respect to claim 10-29 have been considered but are moot in view of the new ground(s) of rejection.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Liam J. Heincer whose telephone number is 571-270-3297. The examiner can normally be reached on Monday thru Friday 7:30 to 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo, Ph.D./  
Supervisory Patent Examiner, Art Unit 1796  
14-Aug-08

LJH  
July 31, 2008